APPENDIX A

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1974

FRIDAY, OCTOBER 11, 1974

CASE NO. 45,245

LEE ANDREW JOHNSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On consideration of the Petition for Rehearing filed by attorneys for petitioner and the response thereto,

IT IS ORDERED that said petition is denied, and it is further

ORDERED that the motion of petitioner to stay mandate is hereby granted and proceedings in this Court and in the District Court of Appeal, Fourth District and in the Circuit Court in and for Broward County, Florida are hereby stayed to and including November 11, 1974 to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

ADKINS, C.J., ROBERTS, DEKLE and OVERTON, JJ., concur
ERVIN, BOYD and McCAIN, JJ., dissent

A True Copy

TEST:

Y
CC: Hon. Edward M. Kay
Hon. George Georgieff
Hon. C. Marie Bernard
Hon. E. J. Comiskey, Clerk
Hon. Clyde L. Heath, Clerk
Hon. Robert W. Tyson, Jr., Judge

Sid J. White
Clerk Supreme Court.

APPENDIX B

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1974

TUESDAY, MAY 28, 1974

CASE NO. 45,245

DISTRICT COURT OF APPEAL, FOURTH DISTRICT

73-464

LEE ANDREW JOHNSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, DEKLE and OVERTON, JJ., concur
ERVIN, BOYD and McCAIN, JJ., dissent

C

cc: Hon. Emmett J. Comiskey, Clerk
Hon. Clyde L. Heath, Clerk
Hon. Robert W. Tyson, Jr., Judge
Hon. Edward M. Kay
of Varon, Stahl and Kay, P.A.
Hon. C. Marie Bernard

A True Copy

TEST:

/s/ Sid J. White

SID J. WHITE
Clerk Supreme Court.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

JANUARY TERM 1974

CASE NO. 73-464.

LEE ANDREW JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Opinion filed March 8, 1974.

Appeal from the Circuit Court for Broward County; Robert W. Tyson, Jr., Judge.

Edward M. Kay of Varon Stahl and Kay, P.A., Hollywood, for appellant.

Robert L. Shevin, Attorney General, Tallahassee, and C. Marie Bernard, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We have carefully considered the points raised on appeal and upon examination of the record are of the opinion that reversible error has not been demonstrated. Although the information contained in the state's bill of

particulars was lacking in completeness we cannot conclude that this error or omission injuriously affected the substantial rights of the defendant. However, we would point out somewhat critically that the spirit and intent of Rule 3.140(n) is not furthered when the state's response is unduly restrictive. Accordingly, the final judgment of conviction and sentence is affirmed.

AFFIRMED.

WALDEN, MAGER, and DOWNEY, JJ., concur.

APPENDIX D

BOOK 271 PAGE 668

IN THE CIRCUIT COURT IN AND
FOR BROWARD COUNTY, FLORIDA

Case Number F72-15013Y

Sheriff's Number 72-7908

STATE OF FLORIDA
vs.

LEE ANDREW JOHNSON

JUDGMENT

You, LEE ANDREW JOHNSON, having (x) been tried and found guilty of Sale of Heroin the Court now adjudges you to be guilty of said crime. And it is,

Ordered And Adjudged that Sentence be deferred until April 12, 1973 @ 1:30 P.M.

DONE AND ORDERED in open Court at Fort Lauderdale, Broward County, Florida, this 21 day of February, 1973.

Signature Illegible

Judge

STATE OF FLORIDA, BROWARD COUNTY

This instrument filed for record 22nd day February, 1973 and recorded MINUTES CIRCUIT COURT 271 page 668 Record Verified.

CLYDE L. HEATH, Clerk
By B. B. Sipp, D.C.

APPENDIX E

Amend. 5 CONSTITUTION

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

Rule 3.140

RULES OF CRIMINAL PROCEDURE

(n) Statement of Particulars. The court, upon motion, shall order the prosecuting attorney to furnish a statement of particulars, when the indictment or information upon which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense. Such statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.

APPENDIX G

IN THE COURT OF RECORD IN AND FOR BROWARD COUNTY, FLORIDA

No. F 72-15013-X (Tyson)

STATE OF FLORIDA,

Plaintiff,

vs.

LEE ANDREW JOHNSON,

Defendant.

MOTION FOR STATEMENTS OF PARTICULARS

The defendant, Lee Andrew Johnson, respectfully shows unto this Court that the Information filed in this cause fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, and therefore, pursuant to F.R.Cr.P. 3.190(n), the defendant requests this Court to order the State to furnish the following particulars:

1. Please state who was present when the alleged sale of heroin took place.

2. Please state the exact time and location of the alleged sale.

I hereby certify that a copy of the foregoing was furnished the State Attorney's Office, Broward County Courthouse, Fort Lauderdale, Florida, this 26 day of May, 1972.

VARON, STAHL and KAY, P.A.
Attorneys for Defendant
2432 Hollywood Boulevard
Hollywood, Florida 33020
Telephone: 923-1548

By: Edward M. Kay

EDWARD M. KAY

APPENDIX H

IN THE COURT OF RECORD IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 72-15013X

JUDGE: TYSON

STATE OF FLORIDA,

Plaintiff

vs.

LEE ANDREW JOHNSON,

Defendant

BILL OF PARTICULARS

COMES NOW the State of Florida by and through the undersigned Assistant State Attorney and pursuant to that certain Motion for Bill of Particulars on file herein, states that the exact time, date, and place of the offense charged are as follows:

1. Agent James Thomas, BCNDDIEU, and confidential informant present when alleged sale of heroin took place.

2. Within three hours earlier or later than 9:36 p.m. on the 18th day of February, 1972, at or near 2400 Block of N.W. 8th Court, Fort Lauderdale, Florida.

3. The Defendant is on notice that the State invokes its rights to reciprocal discovery pur-

suant to Rule 1.220(c) as to any tangible objects, scientific or medical reports, books, papers, and any other documents the Defendant intends to produce at the trial which are in his possession, custody, or control. The State submits that it is entitled to inspect, copy or photograph the same pursuant to the above-mentioned Rule, and its sub-section.

PHILIP S. SHAILER
State Attorney

By: /s Peter F. K. Baraban
PETER F. K. BARABAN
Assistant State Attorney

I HEREBY CERTIFY that a copy of the foregoing was mailed to EDWARD M. KAY, Attorney for Defendant, at 2432 Hollywood Boulevard, Hollywood, Florida 33020, this 2 day of June, 1972.

/s Peter F. K. Baraban
PETER F. K. BARABAN
Assistant State Attorney

APPENDIX I

ARGUMENT

POINT I

DID THE COURT COMMIT ERROR WHEN IT DID NOT EXCLUDE THE TESTIMONY OF TWO STATE WITNESSES WHO WERE PRESENT DURING THE ALLEGED SALE OF HEROIN WHEN THE STATE HAD PREVIOUSLY FILED A BILL OF PARTICULARS CLAIMING THAT THE ONLY PEOPLE WHO WERE PRESENT WERE ANOTHER WITNESS AND A CONFIDENTIAL INFORMANT?

Florida Rules of Criminal Procedure 3.150, which was in full force and effect on June 2, 1972, when the State filed its Bill of Particulars states as follows:

> (n) Statement of Particulars: The court, upon motion, shall order the prosecuting attorney to furnish a statement of particulars, when the indictment or information upon which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense. Such statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded.

APPENDIX J

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. _____

LEE ANDREW JOHNSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

The Petitioner, LEE ANDREW JOHNSON, presents this his Petition for Writ of Certiorari and states:

I

Petitioner seeks to have reviewed a decision of the District Court of Appeal, Fourth District, dated the 8th day of March, 1974, and filed in the Records of said District Court on the 8th day of March, 1974, in Minute Book _____ at Page _____.

II

This Petition is presented under and pursuant to Article Five, Section Four of the Florida Constitution and Rule 4.5(c) of the Florida Appellate Rules.

III

Attached to this Petition is a conformed copy of the decision rendered by the Fourth District Court of Appeal.

Also attached herein is a copy of Volume I of the Record on Appeal; pertinent portions which will be referred to as (R—). Also attached is a copy of the Supplemental Record on Appeal which was considered by the District Court of Appeals, Fourth District, and will be designated as (SR—). Furthermore, copies of the trial transcript that are considered pertinent are attached herein and will be referred as (TR—).

IV

The following are the pertinent facts of this case:

An Information was filed against the Petitioner on May 10, 1972, for one count of sale of heroin (R-1). On May 26, 1972, the Petitioner filed a Motion for Statement of Particulars, asking two questions, to-wit: (1). Please state who was present when the alleged sale of heroin took place and; (2). Please state the exact time and location of the alleged sale (SR-1).

On June 2, 1972, the State Attorney filed his Bill of Particulars and in regard to who was present when the alleged sale took place answered, "Agent James Thomas, BCNDDIEU, and confidential informant present when alleged sale of heroin took place." (SR-2).

The case proceeded to trial on February 21, 1973, and the Petitioner was found guilty of sale of heroin (R-3).

Although the only person the State described as present at the alleged sale was Agent James Thomas, the State presented two separate witnesses, an Agent Lindsay and Agent Clark. Agent Lindsay and Agent Clark testified that they were a car length away when the sale occurred (TR-53-77). Furthermore, Agent Lindsay who was not named in the Bill of Particulars stated during his testimony that he observed the Petitioner "counting something" (TR-68).

Agent Lindsay on cross examination admitted that he never mentioned the counting of anything in his report (TR-68).

Defense counsel cross examined Agent Lindsay as to why this matter was not in his report and whether or not he thought it was important to put it in his report. The following collogue occurred:

> Q. What do you count? What do you usually count? Do you count money?
> A. You can count anything.
>
> Q. Well, didn't you think he was giving him money? Isn't that your opinion?
> A. Yes, it was my opinion, sir.
>
> Q. And you didn't think it was important to put in the report that he was counting something?

At that point the prosecutor made a gratuitous remark in the form of an objection.

> MR. ROBERTS: Your Honor, excuse me. I am going to object to his constant referral to the

report. It is not sworn to. It is given to help. Your Honor, I will ask the jury to be excused.

The essence of the State's objection was that the defense counsel was trying to impeach the witness from his police report.

The Court sustained the State's objection in the following manner (TR-71-72):

THE COURT: Objection sustained. It either is in the report or it isn't in the report and to go any farther, to extend further latitude goes into irrelevance even beyond cross examination.

MR. KAY: Your Honor, I would just for the record proffer that the Defendant, if the Court would allow it, would ask Mr. Lindsay why he did not place in his report that the fact that he had observed the Defendant Johnson, counting something after it was given to him by Bro or Mr. Spies and would explore the reasons for it not having been placed in the report, as to its importance and relevance.

THE COURT: Objection sustained. It is not in there. It is either in there or it isn't in there. Objection sustained.

Escort the jury in."

V

On the foregoing facts the District Court of Appeal of the State of Florida, Fourth District, was presented with the following Points of Law.

(A). DID THE COURT COMMIT ERROR WHEN IT DID NOT EXCLUDE THE TESTIMONY OF TWO STATE WITNESSES WHO WERE PRESENT DURING THE ALLEGED SALE OF HEROIN WHEN THE STATE HAD PREVIOUSLY FILED A BILL OF PARTICULARS CLAIMING THAT THE ONLY PEOPLE PRESENT WERE ANOTHER WITNESS AND A CONFIDENTIAL INFORMANT?

(B). DID THE COURT COMMIT ERROR WHEN IT UNDULY RESTRICTED CROSS EXAMINATION OF A STATE WITNESS IN REGARD WHY HE DID NOT PLACE IN HIS REPORT CERTAIN ESSENTIAL FACTS IN REGARD HIS OBSERVATION OF THE PETITIONER?

On these points of law, the District Court of Appeal of the State of Florida, Fourth District, rendered the following decision, a copy of which is attached hereto:

PER CURIAM.

We have carefully considered the points raised on appeal and upon examination of the record are of the opinion that reversible error has not been demonstrated. Although the information contained in the state's bill of particulars was lacking in completeness we cannot conclude that this error or omission injuriously affected the sub-

stantial rights of the defendant. However, we would point out somewhat critically that the spirit and intent of Rule 3.140(n) is not furthered when the state's response is unduly restrictive. Accordingly, the final judgment of conviction and sentence is affirmed. (Emphasis supplied).

AFFIRMED.

VI

The same point of law as Point (A) is the basis for Rule 3.150(n) of the Florida Rules of Criminal Procedure, said rule having been promulgated by this Honorable Court and being in full force and effect on June 2, 1972, when the State filed its Bill of Particulars, said rule reading:

> (n) Statement of Particulars: The court upon motion, shall order the prosecuting attorney to furnish a statement of particulars, when the indictment or information upon which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense. Such statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant. (Emphasis added).

VII

The same point of law as Point (B) was involved in the case of WALLACE v. STATE, 26 So. 713, decided by this Honorable Court on June 15, 1899. A copy of this decision is attached hereto. The facts involved in WALLACE, supra, are as follows:

There was a desire of defense attorney to ask various questions of State witnesses. The trial court did not allow these questions. Based on these set of facts this Honorable Court held as follows:

> "For the purpose of discrediting a witness, a wide range of cross-examination is permitted, as a matter of right, in regard to his motives, interest, or animus, as connected with the cause or with the parties thereto, upon which matters he may be contradicted by other evidence, * * *".